IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CIVIL APPLICATION NO.142 OF 2005
IN
FIRST APPEAL NO.1228 OF 2004

Govind Moreshwar Patil — Applicant
vs.
Prabhat Parshuram Patil — Respondent

Mr.R.S.Apte i/b.Mr.M.Y.Dhuri for the applicant.

Mr.R.D.Suryavanshi for the respondent.

CORAM : R. M. LODHA &
A.S.BAGGA, JJ.

DATED : 30th June, 2006

P.C.

The appellant-applicant has suffered money decree in the sum of Rs.13,25,384/- together with interest at the rate of 12% per annum from the date of the filing of the Suit until realisation of the whole amount. The trial Court has also restrained the appellant-applicant from creating any third party right or interest in the property bearing Survey No.88, Hissa No.6, situate at village Goddeo Bhayandar, District Thane.

2. The judgment and decree dated 4th February, 2004 is under challenge at the instance of the defendant. The First Appeal has been admitted. By way of an interim order passed on 29th November, 2004, this Court stayed the execution of the impugned judgement and decree

provided the appellant deposited the decretal amount within 12 weeks therefrom. This Court further observed that if the amount was not deposited within 12 weeks, the decree holder shall be entitled to get the decree executed.

3. By this Civil Application, the appellant prays for variation/modification of the order dated 29th November, 2004. The appellant prays that he may be permitted to deposit Rs.5,50,000/- with the trial Court and that he may be permitted to sell few flats in Ganesh Apartment.

4. We are informed by the advocate for the appellant that the appellant has already deposited an amount of Rs.12,12,692/- (Rs.5,50,000/- has been deposited with the trial Court and Rs.6,62,692/- before this Court).

5. The decretal amount as per the impugned judgment and decree as on date comes to around Rs.27,00,000/-. An affidavit has been filed by the appellant on 21st June, 2006 stating therein that the building constructed on the aforesaid plot consists of ground plus three upper floors. On the ground floor, there are two shops of 300 sq.ft. each; on the first floor, there are 6 flats of 300 sq.ft. each; on the second floor, there are 12 flats of 385 sq.ft. each and on third floor, there are 12 flats of 350 sq.ft. each. According to the

appellant, due to incomplete construction, the flats cannot fetch rate more than Rs.500/- per square feet. The appellant seeks permission for sale of 3000 sq.ft. out of about 11,220 sq.ft.

6. The respondent has been awarded money decree only. The decree for injunction has been granted by the trial Court only to ensure that the decree holder is able to have the money recovered as per the decree. A sum of Rs.12,12,692/- has already been deposited. In our considered view, if the appellant is permitted to dispose of few flats admeasuring about 3000 sq.ft., no prejudice shall be caused to the decree holder.

7. We, accordingly, dispose of this Civil Application by the following order:

(i) The appellant is granted permission to sell 8 flats out of 12 flats on the second floor upon his giving an undertaking before this Court that an amount of Rs.15,00,000/- (Rupees fifteen lacs) out of the consideration received for the sale of 8 flats shall be deposited by him with the trial Court.

(ii) The appellant shall deposit a further

sum of Rs.15,00,000/- (Rupees fifteen lacs) from the consideration received for the sale of the 8 flats with the trial Court as soon as the sale agreements are executed with the purchasers.

(iii) The order of injunction shall remain operative in respect of the two shops on the ground floor, six flats on the first floor, four flats on the second floor and twelve flats on the third floor.

(iv) The Registrar of this Court is directed to transmit the amount of Rs.6,62,692/- to the trial Court.

(v) Needless to say that the decree holder shall be at liberty to withdraw the amount as per the order dated 29th November, 2004.

. Order accordingly.

(R.M. LODHA,J.)

(A.S. BAGGA,J.)